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Anahit Tataryan

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANAHIT TATARYAN, RONALD UGOLICK,
and BETTY WRIGHT

Appeal 2009-0619
Application 10/523,866
Technology Center 1700

Decided: January 28, 2009

Before BRADLEY R. GARRIS, JEFFREY T. SMITH, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 13, 28, 30, and 31.¹ (Appeal Brief filed May 4, 2007 (“App. Br.”) 2, III.) We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Claims 1, 13, 28, 30, and 31 are the only claims currently pending in the Application. (Office communication mailed June 30, 2008.)

The invention relates to a single label construction which provides both send and reply address labels. (*See Br. 4.*) Claims 1, 28, and 30 are illustrative of the invention and are reproduced below:

1. A multi-removable label construction comprising:

a face stock layer that is backed with adhesive;

a cut pattern in the face stock layer that defines a removable sub-label within said face stock layer, said removable sub-layer having mailing information printed thereon;

a release liner member that backs and extends beyond said removable sub-label, and that backs less than the entire area of the face stock layer;

whereby the face stock layer and release liner member may be adhered via the adhesive to a first object to be mailed to provide mailing information for said first object, and said removable sub-label thereafter may be removed from said release liner member and adhered to a second object to be mailed to provide mailing information for said second object.

28. A multi-layer label assembly comprising:

a face stock layer coated with adhesive;

said face stock layer being backed with a first release liner layer;

a second release liner layer backing said first release liner; a layer of adhesive between said first and second release liner layers;

a first line of weakness pattern in said face stock layer defining a first removable label, said first line of weakness extending through the face stock layer and the first release liner layer to the second release liner layer;

a second line of weakness pattern within said first line of weakness pattern defining a second removable label, said second line of weakness extending through said face stock layer to the first release liner layer;

a third line of weakness pattern in said second release liner, said third line of weakness pattern being intermediate to said first and second line of weakness patterns, said third line of weakness pattern extending through the release liner but not the face stock layer;

a fourth line of weakness pattern in said face stock layer, said fourth line of weakness pattern extending through said face stock layer, said fourth line of weakness pattern defining a third removable label portion, said fourth line of weakness being within said second line of weakness pattern;

a fifth line of weakness pattern in said first release liner, said fifth line of weakness pattern being intermediate to said fourth line of weakness pattern and said second line of weakness pattern; and

mailing information printed on said third removable label portion;

whereby the second and third removable label portions may be adhered to a first object to be mailed to provide a send address label thereon, and after the object has been received by a recipient the third removable label portion may be removed and placed elsewhere to provide a reply address label.

30. A method for printing and using a send-reply label comprising:

providing a facestock sheet having:

an outer label formed in said facestock sheet and an inner label formed via a die cut within said outer label; and

a release liner sheet adhesively adhered to said inner and outer labels via a releasable adhesive, said release liner sheet having a die cut therein disposed generally outside of said inner label and inside of said outer label to form a releasable liner member;

said inner label, said outer label, and said releasable liner member forming a send label;

printing mailing information on said inner label; and

removing said send label and adhering said send label to a first object to be mailed to provide said mailing information thereon.

The Examiner relies on the following prior art references to show unpatentability:

Stipek, Jr.	3,914,483	Oct. 21, 1975
Aoyagi	4,032,679	June 28, 1977
Rawlings	6,170,879 B1	Jan. 09, 2001

Appellants request review of the following grounds of rejection:

1. claims 1, 30, and 31 under 35 U.S.C. § 102(b) as anticipated by Aoyagi;
2. claims 1, 13, 30, and 31 under 35 U.S.C. § 102(b) as anticipated by Stipek; and
3. claim 28 under 35 U.S.C. § 103(a) as unpatentable over Stipek in view of Rawlings.

*First Ground of Rejection: claims 1, 30, and 31 under
35 U.S.C. § 102(b) as anticipated by Aoyagi*

ISSUES

The issues presented for our review with respect to the first ground of rejection are:

- (1) have Appellants shown that the Examiner reversibly erred in finding that Aoyagi discloses a removable sub-label “having mailing information printed thereon?” and

(2) have Appellants shown that the Examiner reversibly erred in finding that Aoyagi discloses a method of printing and using a label as recited in claims 30 and 31?

We answer both of these questions in the negative for the reasons discussed below.

FINDINGS OF FACT (“FF”)

1. Appellants claim “[a] multi-removable label construction” (claims 1 and 13), “[a] multi-layer label assembly” (claim 28) and “[a] method for printing and using a send-reply label” (claims 30 and 31).
2. According to the Specification, “[a] label construction that yields more than one label is known” (Spec. 1:9). The Specification states that such labels are typically manufactured using a piggy-back construction (Spec. 1:9-10). According to Appellants, a piggy-back label, or a “label-on-a-label,” is one in which a top label may be peeled away to reveal a second label, as illustrated, for example, in Rawlings. (App. Br. 17.) Rawlings discloses, in particular, affixing such multi-part label to a container, mailing the container to a first recipient address printed on the top label, removing the top label, and shipping the same container to a second recipient address printed on the second label. (Rawlings, col. 2, ll. 53-57.)
3. In contrast to the above-described prior art piggy-back label, which requires printing of two separate labels (i.e., a top label and a second label), Appellants’ label is designed to allow reuse of the same printed information. For example, in an embodiment of the invention, Appellants’ label may be used as an address label, the address of the sender being printed on a separable inner portion of the label. The

- entire label is attached to a package as a return address label. The recipient of the mailed package may remove the inner portion of the label bearing the sender's address and attach it to another package as a send address label. (App. Br. 4.)
4. According to the Specification, "[t]he labels may be used as something other than as send address labels, return address labels, and address seals" (Spec. 13:10-12).
 5. Aoyagi "relates to a sticker, in which a sheet portion or clipping having a pressure sensitive adhesive layer temporarily attached on a release paper is made available for secondary use." (Col. 1, ll. 26-29.)
 6. Aoyagi describes each sticker as comprising a sheet 21 (col. 2, ll. 6-7) having detachable inner (interior clipping 21a) and outer (annular piece 21b) portions which may be independently stuck to different surfaces (col. 2, ll. 18-22).
 7. The Examiner finds that Aoyagi's clipping 21a corresponds to Appellants' claimed removable sub-label. (Ans. 3.) The Examiner further finds that Aoyagi discloses that the sub-label is imprinted with information, including mailing information. (Ans. 4.)
 8. Appellants concede that "Aoyagi suggests using a round sticker and a corresponding annular outer sticker on two different items (e.g., a medicine package and an invoice corresponding to the medicine) in order for someone to be able to correlate the invoice to the medicine received." (App. Br. 19.)
 9. Appellants argue that Aoyagi does not anticipate claim 1 because "Aoyagi . . . does not disclose or suggest a label with 'mailing

- information printed thereon' . . . whereby the structure provides a convenient send-reply label, as claimed.” (App. Br. 15.)
10. Appealed claim 1 recites “a removable sub-layer having mailing information printed thereon.” Claim 1 does not include the language “send-reply” or “address.” Claim 1 includes a whereby clause which reads “the face stock layer and release liner member *may be* adhered . . . to a first object to be mailed . . . and said removable sub-label thereafter *may be* removed . . . and adhered to a second object to be mailed” (emphasis added).
 11. Claim 30 includes the term “send-reply” in the preamble, but not in the body of the claim.
 12. The Specification does not include an explicit definition of the term “mailing information.”
 13. According to the Specification,
[i]nformation other than names and addresses may be printed on the labels. For example, the labels may be used as tracking labels and “chain of custody” labels. . . . The inner labels may also be printed with barcode or other tracking information such that the labels may be removed at each location where an envelope or package arrives to indicate that the envelope or package arrived at that location. The inner labels may be provided with medical information, including, for example, a doctor's or other medical personnel's name who is to be responsible for a medical sample. After forwarding the medical sample to other medical personnel, the label for the name of the person forwarding the medical sample may be removed to show a chain of custody.

(Spec. 13:12-23.)

14. Aoyagi discloses that “[l]etters or marks related to lot number, quantity, etc. as well as to [the] name of medicines can be printed on the clipping and correspondingly on the annular piece. Thus it is possible to prepare stickers, for example for the use of a pharmaceutical company” (col. 2, ll. 22-27.)
15. Appellants argue that Aoyagi does not anticipate method claims 30 and 31 because

Aoyagi nowhere discloses, and in no way suggests, the recited method steps of: printing mailing information on said inner label; and removing said send label and adhering said send label to a first object to be mailed to provide said mailing information thereon. [sic] as recited in claim 30, or the further method steps of: mailing said first object; removing said inner label of said send label from said first object; and adhering said inner label to a second object to be mailed to provide said mailing information thereon. [sic] as recited in claim 31.

(App. Br. 19.)

16. As an exemplary use of the disclosed sticker, Aoyagi explains that, [w]hen [a pharmaceutical] company sends medicines to sales stores, if [sic] proceeds as follows. The annular piece 21*b* is detached from the corresponding sticker 21*a* for every package of medicines, to stick the annular piece on a seal or the like. The clipping 21*a* can then be stuck on an invoice to send it to a recipient, who is thereby enabled to check name, quantity, etc. by collating the annular piece on the packing with the clipping on the invoice. In this way, since indication pieces divided from one sheet are respectively stuck on the packed medicines and on the invoice, mistake and trouble are avoided.

(Col. 2, ll. 27-38.)

17. Aoyagi also discloses that sheet 21 (i.e., both clipping 21a and annular ring 21b) may be “sticking to some goods” and the clipping 21a and its adhesive backing detached therefrom. (Col. 2, ll. 66-68.)

PRINCIPLES OF LAW

During prosecution of a patent application, “[t]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). “[T]he fact that the specification describes only a single embodiment, standing alone, is insufficient to limit otherwise broad claim language.” *Howmedica Osteonics Corp. v. Wright Medical Tech., Inc.*, 540 F.3d 1337, 1345 (Fed. Cir. 2008) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc); *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004); *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327-28 (Fed. Cir. 2002)).

If . . . the body of the claim fully and intrinsically sets forth the complete invention, including all of its limitations, and the preamble offers no distinct definition of any of the claimed invention's limitations, but rather merely states, for example, the purpose or intended use of the invention, then the preamble is of no significance to claim construction because it cannot be said to constitute or explain a claim limitation.

Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305 (Fed. Cir. 1999). Similarly, “[a] ‘whereby’ clause that merely states the result of the limitations in the claim adds nothing to the patentability or substance of the

claim.” *See Texas Instruments, Inc. v. United States Int’l Trade Comm’n*, 988 F.2d 1165, 1172 (Fed. Cir. 1993)

The proper test of a publication as a § 102(b) bar is “whether one skilled in the art to which the invention pertains could take the description of the invention in the printed publication and combine it with his own knowledge of the particular art and from this combination be put in possession of the invention on which a patent is sought.” *In re Elsner*, 381 F.3d 1125, 1128 (Fed. Cir. 2004) (quoting *In re LeGrice*, 301 F.2d 929, 939 (CCPA 1962)). The law of anticipation does not require that the reference teach what the subject patent or application teaches. It is only necessary that the claims, as construed, “‘read on’ something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or ‘fully met’ by it.” *See Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

A reference may be from an entirely different field of endeavor than that of the claimed invention or may be directed to an entirely different problem from the one addressed by the inventor, yet the reference will still anticipate if it explicitly or inherently discloses every limitation recited in the claims.

In re Schreiber, 128 F.3d 1473, 1478 (Fed. Cir. 1997).

“Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability.” *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004) (quoting *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)).

CLAIM INTERPRETATION

Interpreting the claim language in light of the Specification, we determine that the term “mailing information” is not limited to a postal address, as suggested by Appellants (*see* FF 9). Rather, we find that the claim term “mailing information” encompasses any type of information forwarded with an item transferred by mail to enable identification of the item or sender/recipient of the item mailed, such as a tracking number, barcode, or name of the item’s manufacturer (FF 12, 13; *see also*, FF 4).

We interpret the term “send-reply” in claim 30 (FF 11) as a statement of intended use. Claim 30 recites steps requiring adhering a “send label” to an object and claim 31 recites a step of mailing the object. Claim 31 further recites removing an inner label of the send label and adhering it to a second object to be mailed. However, the recited steps do not require mailing the second object to the sender of the first object nor do the claims include any other language requiring use of the label as a reply label (*see* FF 4, 13).

In addition, we do not interpret claim 31 as requiring that the method steps be performed in the recited order.

ANALYSIS

Aoyagi discloses a label having a removable printable sub-label which may be secured to an invoice allowing a recipient of an item to identify information relating to the sender/item. (FF 14, 16.) Therefore, contrary to Appellants’ contention (FF 9), we find that the evidence supports the Examiner’s finding that Aoyagi discloses a removable sub-label “having mailing information printed thereon” (FF 7) as claimed in claim 1.²

² In any event, we are further in agreement with the Examiner (Ans. 5-6) that the record before us does not establish that the claim 1 mailing

Likewise, Appellants have not persuasively argued (*see* FF 15) that the Examiner reversibly erred in finding that the claim 30 and claim 31 method steps read on Aoyagi's method of use. Aoyagi discloses that the label may be attached to mailed goods (FF 17), such as a package containing medications mailed by a pharmaceutical company (FF 16). The printed sub-label may be removed from the label and stuck to another mailed item, such as an invoice (FF 5, 6, 16), to allow the recipient to ensure that the medication received corresponds to that identified on the invoice (*see* FF 8).³

Accordingly, we sustain the Examiner's rejection of claims 1, 30, and 31 under 35 U.S.C. § 102(b) as anticipated by Aoyagi.

*Second Ground of Rejection: claims 1, 13, 30, and 31 under
35 U.S.C. § 102(b) as anticipated by Stipek*

ISSUES

The issues presented for our review with respect to the second ground of rejection are:

information constitutes printed matter which is functionally related to the substrate (i.e., the claim 1 removable sub-label) and therefore distinguishable from Aoyagi in terms of patentability.

³ As indicated above, we interpret claim 31 as reading on a method in which the removing step occurs before the mailing step. Thus, claim 31 reads on a method in which a sub-label is removed from a label on a package and attached to an invoice, prior to mailing the package. In this regard, we note that claims 30 and 31 do not preclude an additional step of printing mailing information on the outer label as well as the inner label, thus allowing simultaneous mailing of both first and second objects using the same label.

(1) have Appellants shown that the Examiner reversibly erred in finding that Stipek discloses a removable sub-label “having mailing information printed thereon?” and

(2) have Appellants shown that the Examiner reversibly erred in finding that Stipek discloses a method of printing and using a label as recited in claims 30 and 31?

We answer the first question in the negative and the second question in the affirmative for the reasons discussed below.

ADDITIONAL FINDINGS OF FACT

18. Stipek claims “[a] multiple part label including: a sheet of paper having indicia on one side thereof to form a label, . . . and at least one inner label formed in said first label by wholly severing said first label with said inner label being located within the periphery of said first label” (col. 4, claim 5).
19. Stipek states that “[a]n object of this invention is a label having a number of inner labels which can be easily removed from the main label after it is affixed to a package or container with the inner labels also being easily attachable to packages or containers” (col. 1, ll. 14-18).
20. With respect to claim 1, Appellants argue that Stipek does not disclose “the important limitations . . . with respect to mailing information being printed on the label so as to create a removable and repositionable mailing address label.” (App. Br. 16.) Appellants advance a similar argument with respect to claim 13: “Stipek never mentions or suggests mailing information on the labels or using one of

- his decorative labels to provide a reusable mailing label such as a convenient send-reply label” (App. Br. 17).
21. Appealed claim 1 does not recite a “mailing address label.”
Appealed claim 13 does not recite “a reusable mailing label” or a “send-reply label.”
 22. According to Stipek, “[t]he inner removable labels may be imprinted with indicia designating them as coupons or may be imprinted with material of a decorative or informative nature” (col. 1, ll. 10-13).
 23. Stipek states that “the main label 13 may carry other indicia such as the name of the manufacturer, distributor, packer, etc., or other information identifying the container or package to which the label is affixed.” (Col. 3, l. 14-17.)
 24. Appellants argue that Stipek fails to disclose or suggest the recited “printing” and “removing” steps in claim 30, as well as the recited method steps in claim 31. (App. Br. 19.)
 25. The Examiner responds that Stipek teaches the recited steps in claims 30 and 31; however, the Examiner does not specifically identify the portions of Stipek relied upon for such disclosure. (Ans. 7; *see also*, Ans. 4-5.)

ANALYSIS

As discussed above, we interpret the claim term “mailing information” as encompassing any type of information forwarded with an item transferred by mail to enable identification of the item or sender/recipient of the item mailed, including the name of an item’s manufacturer. (*See* pp. 10-11, *supra*, Claim Interpretation.) Stipek discloses printing a label with material of an “informative nature” (FF 22) including

information identifying the manufacturer of the package contents (FF 23). Therefore, contrary to Appellants' contention (FF 20), we find that the evidence supports the Examiner's finding that Stipek discloses a removable sub-label (claim 1) and inner label (claim 13) "having mailing information printed thereon" (*see* Ans. 4-5).⁴

However, although we find that Stipek's label *may be* used to mail objects (*see* FF 10) as we are in agreement with Appellants that the evidence of record fails to support the Examiner's finding that Stipek discloses a method of using a label as recited in appealed claims 30 and 31 (FF 24, 25).

Accordingly, we sustain the rejection of claims 1 and 13 under 35 U.S.C. § 102(b) as anticipated by Stipek, but reverse the rejection of claims 30 and 31 under 35 U.S.C. § 102(b) as anticipated by Stipek

*Third Ground of Rejection: claim 28 under 35 U.S.C. § 103(a)
as unpatentable over Stipek in view of Rawlings*

ISSUE

The issue presented for our review with respect to the third ground of rejection is: have Appellants shown reversible error in the Examiner's determination that the invention, as claimed in claim 28, would have been obvious in view of the combined teachings of Stipek and Rawlings?

We answer this question in the negative for the reasons discussed below.

⁴ Further, as noted above (*supra*, note 2), we are in agreement with the Examiner (Ans. 6) that the record before us does not establish that the claim 1 and 13 mailing information constitutes printed matter which is functionally related to the substrate (i.e., the claim 1 removable sub-label and claim 13 inner label) and therefore distinguishable from Stipek in terms of patentability.

ADDITIONAL FINDINGS OF FACT

26. The Examiner concedes that “Stipek . . . fails to teach the presence of a second release liner backing the first release liner.” (Ans. 5.) The Examiner finds that “Rawlings relates to a piggy-back label construction comprising a first release liner backed by a second release liner.” (Ans. 5.) The Examiner concludes that
- it would have been obvious to one having ordinary skill in the [art] to utilize Rawlings' teaching of using a second release liner backing the first release liner in the invention of Stipek with the motivation to provide for re-usability of the label. Regarding the presence of fourth and fifth line of weaknesses of claim 28, it would have been obvious duplication of parts, absent any showing of criticality by the applicant.
- (Ans. 5.)
27. Appellants argue that “[b]ecause Rawlings requires pre-printing of the second label, Rawlings does not relate to the send-reply label of the present invention.” (App. Br. 17-18.) Appellants also argue that Rawlings does not disclose a single label that can be removed from a first package and used on a second package. (App. Br. 18.)
28. Appellants do not present any arguments traversing the Examiner’s proposed motivation to combine Stipek and Rawlings. Nor do Appellants argue that the invention, as claimed in claim 28, would not result from the Examiner’s proposed modification of Stipek based on Rawlings’ disclosure. (*See* App. Br. 17-18 and Reply Br. in its entirety.)

PRINCIPLES OF LAW

The test for obviousness is what the collective teachings of the prior art would have suggested to one of ordinary skill in the art. *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991).

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742 (2007). “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (““On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.””) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

ANALYSIS

In our view, the Examiner provided a reasonable basis to conclude that the claimed invention would have been obvious to one of ordinary skill in the art for the reasons well-stated in the Answer. (*See* FF 26.) Appellants

have not met their burden to establish reversible error in the Examiner's obviousness determination.

Appellants' arguments narrowly focus on the explicit teachings of Rawlings. (FF 27.) Appellants have not, however, addressed the facts and reasons relied on by the Examiner (FF 26) in concluding that a person of ordinary skill in the art at the time of the invention would have motivated to modify Stipek, based on Rawlings' disclosure, to achieve the invention of appealed claim 28 (FF 28). In other words, Appellants cannot overcome the rejection by simply arguing that various claim features are not taught by Rawlings, where the Examiner has relied on Stipek for a disclosure of the argued features.

The rejection of claim 28 under 35 U.S.C. § 103(a) as unpatentable over Stipek in view of Rawlings is sustained.

CONCLUSION

We affirm the decision of the Examiner rejecting claims 1, 30, and 31 under 35 U.S.C. § 102(b) as anticipated by Aoyagi; claims 1 and 13 under 35 U.S.C. § 102(b) as anticipated by Stipek; and claim 28 under 35 U.S.C. § 103(a) as unpatentable over Stipek in view of Rawlings.

We reverse the decision of the Examiner rejecting claims 30 and 31 under 35 U.S.C. § 102(b) as anticipated by Stipek.

Appeal 2009-0619
Application 10/523,866

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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